STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Roger and Marcia Ottoman
Claim Against Licensee's Proof of Financial Responsibility Deposit

_____/

Issued and Entered,
This 16th day of July, 2012,
By Stephen R. Hilker,
Senior Deputy Commissioner

ORDER OF DENIAL
OF CLAIM AGAINST MORTGAGE LICENSEE'S PROOF OF FINANCIAL RESPONSIBILITY DEPOSIT

I.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to Section 34(2) of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1684(2), "Claims may only be filed against a licensee's proof of financial responsibility as provided under this section by the licensee's borrowers, mortgage loan applicants, loan servicing customers, and the commissioner."

2. In addition, "Claims filed against a proof of financial responsibility by a borrower or loan applicant shall involve only mortgage loans or mortgage applications secured or to be secured by residential real property located in this state." MCL 445.1684(3).

3. On March 8, 2011, Roger and Marcia Ottoman ("Claimants") filed a Proof of Claim Against a Mortgage Company Bond with the Office of Financial and Insurance Regulation (OFIR), naming the mortgage company as "Metro Finance aka RL & DG Investments LLC."

4. The Claimants submitted various documents in support of their claim, including a contract originally titled "Monthly Rental Agreement," with various handwritten changes including changing the title to "Monthly Mortgage Agreement". Several of the documents submitted in support of the original claim purport to name either Metro Finance and/or D & R Mortgage Corp. as a party. After reviewing the claim, on December 22, 2011 OFIR issued a letter [hereinafter Denial Letter] deeming the

Ottomans' claim invalid and denying their claim because OFIR does not hold a surety bond in the name RL & DG Investments LLC, either directly or as an alias.

5. D & R Mortgage Corp. dba Metro Finance was a licensed first mortgage broker, lender and servicer and secondary mortgage lender registrant. The company is no longer licensed or registered under the MBLSLA or the Secondary Mortgage Loan Act.

6. On March 30, 2012, OFIR received a letter [hereinafter March 30 Letter] from the Claimants' attorney, requesting that OFIR re-examine the December 22, 2011 denial, and alleging that Metro Finance is actually an assumed name of RL & DG Investments LLC. The Claimants' attorney attached various documents purporting to support the Ottoman's appeal. Those documents include:

   a. Copy of "Proof of Claim against a Mortgage Company Bond" form filed by the Ottomans.
   b. Copy of letter dated December 8, 2011, authorizing White Law PLLC, as the Ottoman's attorney, to speak with OFIR on their behalf.
   c. Copy of denial letter.
   d. Printout of corporate entity details showing Metro Finance as linked to D&R Mortgage Corp.
   e. Copy of Compliance Agreement, signed by the Ottomans and (presumably) s signature is above the description "RL and DG Investments LLC by , Member" with "for Metro Finance a.k.a. D+R Mortgage" handwritten in. The sheet appears to be notarized, although the notarization is truncated.
   f. Copy of borrower's statement.
   g. Copy of purchase agreement, signed by Ottomans.
   h. Various court filings.
   i. Check #1067,
   j. Check #1078,
   k. Check #1016,
   l. Check #1028,
   m. Check #1052,
   n. Check #1508,
   o. Check #1468,
   p. Bank statements for Marcia C. Ottoman DBA Chelsea Laundry.
   q. Bank statements for Roger J. Ottoman.

7. Claimants' March 30 Letter will be treated as both an appeal and a request for reconsideration of OFIR's Denial Letter for purposes of this Order.

8. Claimants essentially present no new evidence of these allegations, as OFIR was aware of the allegations made in the March 30 Letter prior to the issuance of the Denial Letter.

9. Claimants' request, interpreted as a motion for reconsideration, should therefore fail, since Claimants do not demonstrate a palpable error by which OFIR has been misled, and merely present issues previously considered by OFIR.

10. In the alternative, should OFIR treat Claimants' March 30 Letter as a new claim, the claim must still fail, because the evidence presented either lacks credibility or does not establish that Claimants are entitled to call upon the surety bond submitted by D & R Mortgage Corp. The only evidence linking D & R Mortgage Corp. to the transaction is handwritten changes on the Agreement. The handwritten changes appear to be done in multiple styles of handwriting and are not dated, nor are they initialed by any parties except the Claimants. The relevant hand-written changes are also not present on the copies of the Agreement submitted by RL & DG Investments LLC.

11. In addition, cancelled checks supplied as documentation with the March 30 Letter indicates that Claimants made rental payments in checks payable to RL & DG Investments. None of the checks show any payment to either D & R Mortgage Corp. or to Metro Finance. In regards to the court filings submitted by Claimants, the only relevant legal finding by a court determines that the transaction between RL & DG Investments and Claimants constituted an equitable mortgage. Decision, *RL & DG Investments-Chelsea v. Ottoman* at 2, DC3-07-2112-LT (14A-3 District Court July 30, 2008). The Court made no connection between the equitable mortgage and either Metro Finance or D & R Mortgage Corp., and also appears to make a factual finding that Metro Finance was not involved. *Id.* at 1-2.

12. Given the lack of credible evidence showing that D & R Mortgage Corp. was involved in the transaction between the Claimants and RL & DG Investments, and the lack of any showing of fraud or wrongdoing, there are no grounds for calling on the surety bond submitted by D & R Mortgage Corp. Claimants' new claim is therefore without merit and must fail.

13. The Claimants have failed to demonstrate they are borrowers, mortgage loan applicants or loan servicing customers of D & R Mortgage Corp. or Metro Finance.

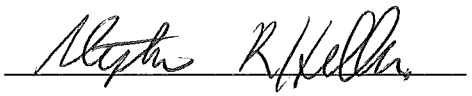
II.
ORDER

Based on the Findings of Fact and Conclusions of Law above, it is **ORDERED** that Roger and Marcia Ottoman's claim against D & R Mortgage Corp. dba Metro Finance proof of financial responsibility deposit is denied.

III.
APPEAL

This Order of Denial is an administrative order subject to judicial review pursuant to the Michigan Constitution, MCL Const. Art. 6, § 28, and subject to the Revised Judicature Act, MCL 600.631.

OFFICE OF FINANCIAL AND INSURANCE REGULATION



Stephen R. Hilker
Senior Deputy Commissioner

Dated: 7/16/12